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17JE-CC00684 - BONITA ABRAM V MERITAIN HEALTH (E-CASE)

Case Header	Parties & Attorneys	Docket Entries	Charges, Judgments & Sentences	Service Information	Filings Due	Scheduled Hearings & Trials	Civil Judgments	Garnishments/Execution
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- 01/18/2018 ☐ **Motion Hearing Scheduled**
Scheduled For: 03/06/2018; 9:00 AM ; TROY CARDONA; Jefferson
- ☐ **Hearing Continued/Rescheduled**
Hearing Continued From: 01/23/2018; 9:00 AM Motion Hearing
- ☐ **Summons Personally Served**
 Document ID - 18-SMCC-24; Served To - LESSNER, HOWARD; Server - ; Served Date - 10-JAN-18;
 Served Time - 00:00:00; Service Type - Special Process Server; Reason Description - Served
- ☐ **Notice of Service**
 Affidavit of Service; Electronic Filing Certificate of Service.
Filed By: LARA L GILLHAM
On Behalf Of: BONITA ABRAM
- ☐ **Amended Notice of Hrng Filed**
 Amended Notice of Hearing; Electronic Filing Certificate of Service. MOTION TO ADJUDICATE HEALTH CARE LIEN 3-6-18 @ 9:00 AM
Filed By: LARA L GILLHAM
On Behalf Of: BONITA ABRAM
- 01/12/2018 ☐ **Notice of Service**
 Affidavit of Service; Electronic Filing Certificate of Service.***MUST SUBMITT SUMMONS RETURN WITH AFFIDAVIT FOR TRACKING***
Filed By: LARA L GILLHAM
On Behalf Of: BONITA ABRAM
- 01/09/2018 ☐ **Summons Issued-Circuit**
 Document ID: 18-SMCC-24, for LESSNER, HOWARD.
- 01/05/2018 ☐ **Motion Special Process Server**
 Motion for Appointment of Special Process Server; Electronic Filing Certificate of Service. JOSE PINEIRO-APPROVED
Filed By: LARA L GILLHAM
On Behalf Of: BONITA ABRAM
- ☐ **Motion Filed**
 Plaintiffs First Amended Motion to Adjudicate Health Care Lien; Electronic Filing Certificate of Service.
Filed By: LARA L GILLHAM
- 12/21/2017 ☐ **Motion for Leave**
 Plaintiffs Motion for Leave by Consent to File First Amended Motion to Adjudicate Health Care Lien; Exhibit 1; Electronic Filing Certificate of Service.SENT TO DIV REVIEWED 01/01/18
Filed By: LARA L GILLHAM
On Behalf Of: BONITA ABRAM
- 12/13/2017 ☐ **Motion to Dismiss**

Defendants Motion to Dismiss; Affidavit of Daniel A Platt in Support of Meritain Health Incs Motion to Dismiss; Ex A to Affidavit of Daniel A Platt; Ex B to Affidavit of Daniel A Platt; Electronic Filing Certificate of Service.

Filed By: KEVIN ANDREW SULLIVAN

On Behalf Of: MERITAIN HEALTH INC--120 SOUTH CENTRAL

☐ **Entry of Appearance Filed**

Entry of Appearance; Electronic Filing Certificate of Service.

Filed By: KEVIN ANDREW SULLIVAN

On Behalf Of: MERITAIN HEALTH INC--120 SOUTH CENTRAL

11/06/2017 ☐ **Motion Hearing Scheduled**

Associated Entries: 01/18/2018 - Hearing Continued/Rescheduled

Scheduled For: 01/23/2018; 9:00 AM ; TROY CARDONA; Jefferson

11/03/2017 ☐ **Notice of Hearing Filed**

Notice of Hearing. JAN. 23, 2018 AT 9AM

Filed By: LARA L GILLHAM

On Behalf Of: BONITA ABRAM

10/16/2017 ☐ **Notice of Service**

RETURN OF SERVICE- MERITAIN HEALTH INC Electronic Filing Certificate of Service.

☐ **Return Service - Other**

Document ID - 17-SMCC-1456; Served To - MERITAIN HEALTH INC--120 SOUTH CENTRAL; Server - SHERIFF OF ST LOUIS COUNTY; Served Date - 13-OCT-17; Served Time - 09:00:00; Service Type - Sheriff Department; Reason Description - Served; Service Text - SERVED LCW-A.BRANDON

09/12/2017 ☐ **Summons Issued-Circuit**

Document ID: 17-SMCC-1456, for MERITAIN HEALTH INC--120 SOUTH CENTRAL.

09/11/2017 ☐ **Filing Info Sheet eFiling**

Filed By: LARA L GILLHAM

☐ **Pet Filed in Circuit Ct**

Plaintiffs Motion to Adjudicate Health Care Lien.

Filed By: LARA L GILLHAM

On Behalf Of: BONITA ABRAM

☐ **Judge Assigned**

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI**

BONITA ABRAM,)
)
 Plaintiff,)
)
 v.) Case No.)
)
 MERITAIN HEALTH)
)
 SERVE: CT Corporation System)
 120 South Central Avenue)
 Clayton, MO 63105)
)
 Defendant.)

PLAINTIFF'S MOTION TO ADJUDICATE HEALTH CARE LIEN

COMES NOW Plaintiff, by and through counsel, and for her Motion to Adjudicate Health Care Lien, states as follows:

1. Plaintiff Bonita Abram is a resident of Jefferson County, in the State of Missouri.
2. Defendant Meritain Health is Plaintiff's primary health insurance provider, and an ERISA lien holder.
3. On or about April 6, 2013, Plaintiff Bonita Abram suffered serious injuries as a result of an automobile crash in Jefferson County, Missouri, and subsequently made claims for damages against the negligent driver, Loy Cooper and his insurance company, Shelter Mutual Insurance Company.
4. As a result of her injuries, Plaintiff underwent extensive medical treatment from numerous medical providers over the span of two years.
5. As a result of the above referenced incident, Plaintiff incurred debts in the form of significant medical expenses totaling over \$187,000.00, of which \$146,531.06 remain outstanding and unpaid.

6. Both Shelter Mutual Insurance Company and Plaintiff's auto insurance company, American Family Mutual Insurance Company, have offered to tender settlement for their respective policy limits, in the combined total amount of \$200,000.00. Plaintiff anticipates that this amount represents the total amount of compensation she will receive from the injuries she suffered in the automobile crash on April 6, 2013.

7. Plaintiff made claims for her above-referenced medical treatment with Meritain Health, her primary health insurance provider, and District No. 9, I.A. of M. & A.W., her secondary health insurance provider.

8. District No. 9, I.A. of M. & A.W. made limited payment to Plaintiff's medical providers and has asserted its statutory ERISA lien against Plaintiff's settlement in the amount of \$3,797.23.

9. Defendant Meritain made limited payment to Plaintiff's medical providers and has asserted its statutory ERISA lien against Plaintiff's settlement in the amount of \$13,405.18.

10. Defendant Meritain refuses to pay for the remainder of Plaintiff's claims, asserting that its policy is only applicable for excess insurance coverage after any vehicle insurance policy that pays medical payments is exhausted.

11. Plaintiff's policy with Meritain is only considered "excess" if the vehicle insurance has medical payments available to Plaintiff. Specifically, the Coordination of Benefits states, in relevant part:

Vehicle Limitation

When medical payments are available under any vehicle insurance, the Plan shall pay excess benefits only, without reimbursement for vehicle plan and/or policy deductibles. This Plan shall always be considered secondary to such plans and/or policies. This applies to all forms of medical payments under any vehicle plans and/or policies regardless of its name, title or classification.

12. Medical payments were not available to Plaintiff under her insurance policy with American Family.

13. Further, there is insufficient auto insurance to cover Plaintiff's claims from her motor vehicle accident, and Plaintiff does not have any other liability or medical payments insurance policies from which she can recover for her injuries.

14. Plaintiff's secondary health insurance, District No. 9, is also available to pay toward her claims, but is unable to do so until Meritain pays its portion.

15. Settlement for Plaintiff's auto insurance claims cannot proceed until her health insurance pays her outstanding bills.

16. Plaintiff's undersigned counsel has incurred attorney's fees and costs in the total amount of \$39,949.75, plus the costs to file this action.

17. If Meritain continues to refuse payment on Plaintiff's claims, then after deductions are made from plaintiff's settlement for attorney's fees and costs (\$39,949.75) and her outstanding medical bills (\$146,531.06), there will not be sufficient funds remaining to pay any subrogation interest by ERISA providers or other lien holders.

18. However, if Meritain were to pay on the claims for Plaintiff's medical treatment, there would be sufficient funds to pay the subrogation interests of both Meritain and District No. 9, as well as the other lien holders.

19. Good cause exists for this Court to enter an Order requiring Defendant Meritain Health to make its contractual payment on Plaintiff's medical bills before the settlement proceeds are distributed.

WHEREFORE, Plaintiff prays this Court enter an Order requiring Defendant Meritain Health to make payment on Plaintiff's medical bills in the fashion set forth herein, for expenses, fees, and court costs incurred in filing this action, and for such other and further relief as this Court deems just and proper under the circumstances.

BROWN & CROUPPEN, P.C.

BY: /s/ Lara L. Gillham
Andrea McNairy, #58558
Lara L. Gillham, #67320
One Metropolitan Square
211 N. Broadway, Ste. 1600
St. Louis, MO 63102
(314) 561-6319
(314) 421-0359 (Fax)
Attorney for Plaintiff
andream@getbc.com
Larag@getbc.com
pipleadings@getbc.com
Attorneys for Plaintiff



IN THE 23RD JUDICIAL CIRCUIT COURT, JEFFERSON COUNTY, MISSOURI

Judge or Division: TROY CARDONA	Case Number: 17JE-CC00684	(Date File Stamp)
Plaintiff/Petitioner: BONITA ABRAM	Plaintiff's/Petitioner's Attorney/Address LARA L GILLHAM 100 NORTH BROADWAY 421 ST. LOUIS, MO 63104	
Defendant/Respondent: MERITAIN HEALTH INC--120 SOUTH CENTRAL	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050	
Nature of Suit: CC Other Miscellaneous Actions		

Summons in Civil Case

The State of Missouri to: MERITAIN HEALTH INC--120 SOUTH CENTRAL

Alias:

C/O CT CORP SYSTEM
120 SOUTH CENTRAL AVE
CLAYTON, MO 63105

COURT SEAL OF



JEFFERSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

Michael E Reuter, Circuit Clerk

By: /s/ Amy Armbruster, Deputy Clerk

September 12, 2017

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☐ other _____.

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

Referred
SRS
10/10



IN THE 23RD JUDICIAL CIRCUIT COURT, JEFFERSON COUNTY, MISSOURI

Judge or Division: TROY CARDONA	Case Number: 17JE-CC00684
Plaintiff/Petitioner: BONITA ABRAM	Plaintiff's/Petitioner's Attorney/Address LARA L GILLHAM 100 NORTH BROADWAY 421 ST. LOUIS, MO 63104
Defendant/Respondent: MERITAIN HEALTH INC--120 SOUTH CENTRAL	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: MERITAIN HEALTH INC--120 SOUTH CENTRAL
Alias:

C/O CT CORP SYSTEM
120 SOUTH CENTRAL AVE
CLAYTON, MO 63105

30 CTCOR

COURT SEAL OF

JEFFERSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

Michael E Reuter, Circuit Clerk
By: /s/ Amy Armbruster, Deputy Clerk
September 12, 2017

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.
☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☒ other LCW - A. BRANDON

Served at CT CORP, (address)
in St. Louis County (County/City of St. Louis), MO, on OCT 13 2017 (date) at 9 AM (time).

Printed Name of Sheriff or Server LEISINGER

Signature of Sheriff or Server [Signature]

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date)

My commission expires: _____ Date

Notary Public

Sheriff's Fees

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$ _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

10/11/17

17-SMCC-8409

Received
2017 OCT - 9 AM 10:30
St. Louis County
Sheriff's Office

OCT - 9 2017

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI**

BONITA ABRAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17JE-CC00684
)	
MERITAIN HEALTH)	Div. 6
)	
Defendant.)	

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff Bonita Abram will call up for hearing Plaintiff's Motion to Adjudicate Health Care Lien on **Tuesday, January 23, 2018 at 9:00 a.m.** before the Honorable Judge Cardona in Division 6 of the Circuit Court of Jefferson County, Missouri.

BROWN & CROUPPEN, P.C.

BY: /s/ Lara L. Gillham
Lara L. Gillham, #67320
Andrea McNairy, #58558
One Metropolitan Square
211 N. Broadway, Ste. 1600
St. Louis, MO 63102
(314) 261-7122
(314) 754-9886 (Fax)
Attorney for Plaintiff
Larag@getbc.com
andream@getbc.com
pipleadings@getbc.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 3rd day of November, 2017, a true and correct copy of the foregoing was served via the Court's electronic filing system, and via electronic mail to all counsel of record.

/s/ Lara L. Gillham

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

BONITA ABRAM,

Plaintiff,

v.

MERITAIN HEALTH,

Defendant.

Case No.: 17JE-CC00684

DEFENDANT'S MOTION TO DISMISS

Defendant Meritain Health, Inc. ("Meritain") submits the following Motion to Dismiss (the "Motion") Plaintiff's "Motion to Adjudicate Health Care Lien" (the "Petition") and respectfully requests that this action be dismissed pursuant to Mo. Sup. Ct. R. 55.27(a)(6) for failure to state a claim upon which relief may be granted. In support of this Motion, Defendant Meritain states as follows:

I. INTRODUCTION

Plaintiff Bonita Abram's ("Plaintiff") "Motion to Adjudicate Health Care Lien" asserts claims against Meritain, a third party administrator of employee benefit plans, arising from Meritain's alleged breach of a contract with Plaintiff. However, there is no contract between Meritain and Plaintiff. The only relevant contract to which Plaintiff is possibly a party is the Midwest Library Service ("MLS") Employee Benefit Plan (the "Plan"). Meritain is not a party to the Plan. The only relevant contract to which Meritain is a party – an administrative services agreement ("ASA") between Meritain and the Plan – makes clear by its express terms that there is no contractual relationship whatsoever between Plaintiff and Meritain.¹

Importantly, and as set forth in the ASA, Meritain's role with respect to the Plan is as a third party administrator, and not as an insurer or plan sponsor, and "[t]he Client [*i.e.*, MLS] retains all discretionary authority with respect to the Plan and the administration of the Plan."

¹ Pursuant to Mo. Sup. Ct. R. 55.28, Meritain submits as Exhibits A and B to the Affidavit of Daniel A. Platt ("Platt Aff.") copies of the Plan and ASA, respectively.

Platt Aff., Ex. B, § 6.10 (emphasis added). Indeed, the ASA clearly states that “Meritain does not insure, guarantee or underwrite the liability of the Client [*i.e.*, MLS] under the Plan. The Client [*i.e.*, MLS] and not Meritain, shall remain solely liable for the payment of Claims and all other expenses incidental to the Plan.” *Id.*, § 6.6 (emphasis added).

Plaintiff’s breach of contract claim fails because there is no contract between Plaintiff and Meritain and because MLS, and not Meritain, holds full discretionary authority over the operation and administration of the Plan. For these reasons, and those set forth below, Meritain respectfully requests that the Petition be dismissed.

II. STATEMENT OF ALLEGED FACTS

Plaintiff alleges that Plaintiff suffered injuries from an automobile crash in Jefferson County, Missouri on or about April 6, 2013, and made claims for damages against the other driver and the other driver’s insurance company, Shelter Mutual Insurance Company. Petition, ¶ 3. As a result of those injuries, she has incurred medical expenses “totaling over \$187,000.00, of which \$146,531.06 remain outstanding and unpaid.” *Id.*, ¶ 5. Both Shelter Mutual Insurance Company and American Family Mutual Insurance Company have offered to tender settlement for their respective policy limits, in the combined total amount of \$200,000. *Id.*, ¶ 6.

Plaintiff submitted claims for her medical treatment with the Plan through its third party administrator, Meritain, and Meritain, on behalf of the Plan, paid certain medical providers. *Id.*, ¶¶ 7, 9. The core of the claims in this case revolve around Plaintiff’s allegations that certain claims have been denied by the Plan and that the above-mentioned settlement “cannot proceed until her health insurance pays her outstanding bills.” *Id.*, ¶¶ 10, 15.

Importantly, the Petition makes clear that its claim against Meritain is rooted solely in *contract*. Specifically, Plaintiff alleges that “[g]ood cause exists for this Court to enter an Order requiring Defendant Meritain Health to make its contractual payment on Plaintiff’s medical bills before the settlement proceeds are distributed.” *Id.*, ¶ 19 (emphasis added).

III. ARGUMENT

A. Legal Standard For A Motion To Dismiss.

Mo. Sup. Ct. R. 55.27(a)(6) permits Meritain to file this Motion for “failure to state a claim upon which relief can be granted.” This Court should grant Meritain’s Motion and dismiss Plaintiff’s cause of action against Meritain if it determines that “the pleadings fail to state a cause of action under the law or fail to state facts entitling the party to relief[.]” Fox v. White, 215 S.W.3d 257, 260 (Mo. App. 2007).

Plaintiff fails to attach to its Petition either the policy or any other document that might demonstrate any contractual obligations owed to Plaintiff by Meritain. As Meritain has submitted certain evidence via affidavit that conclusively demonstrates the infirmities of the claims pled against Meritain herein, the Court may convert this Motion to a motion for summary judgment. *See* Mo. Sup. Ct. R. 55.27(a) (“If, on a motion asserting the defense numbered (6) for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 74.04. All parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 74.04.”).

B. Plaintiff Has Failed To State A Claim Against Meritain Upon Which Relief Can Be Granted.

1. Plaintiff’s Breach Of Contract Claim Fails Because There Is No Contract Between Plaintiff And Meritain.

Naturally, in order for the sole cause of action for breach of contract to survive this Motion, Meritain must be a party to the alleged contract. *See* Continental Casualty Co. v. Campbell Design Group, 914 S.W.2d 43, 44 (Mo. App. 1996) (“What is not discussed by Continental is the basic legal premise that a contract generally binds no one but the parties thereto, and it cannot impose any contractual obligation or liability on one not a party to it.” (citing 17A C.J.S. *Contracts* § 520 (1963))).

Plaintiff alleges that Meritain’s “refus[al] to pay for the remainder of Plaintiff’s claims” violates the Plan. *See* Petition, ¶¶ 10-11. However, the Plan unequivocally demonstrates that

Meritain is not a party to the Plan and that the MLS is the Plan Sponsor, Plan Fiduciary and Plan Administrator. See Platt Aff., Ex. A, p. 1 (“Midwest Library Service (the ‘Employer’ or the ‘Plan Sponsor’) has adopted this amended and restated Plan Document and Summary Plan Description”); see also id., p. 76 (identifying MLS as the “Plan Sponsor,” “Named Fiduciary” and “Plan Administrator”).

Moreover, the only contract to which Meritain *is* a party² confirms that MLS – and not Meritain – retains all authority regarding the operation of the Plan. In particular, the ASA acknowledges that:

- “Meritain does not insure, guarantee or underwrite the liability of the Client under the Plan. The Client [i.e., MLS], and not Meritain, shall remain solely liable for the payment of Claims and all other expenses incidental to the Plan.” Id., Ex. B § 6.6.
- MLS, and not Meritain, “is the ‘plan sponsor,’ ‘plan administrator,’ and ‘named fiduciary with respect to the Plan,’” and that “[a]s such, the Client [i.e., MLS] shall at all times retain full discretionary control, authority and responsibility with respect to the operation and administration of the Plan and Plan assets.” Id., § 6.9.
- “Meritain shall have no discretionary authority to interpret the Plan or to adjudicate Claims.” Id., § 6.10

Because there is no contractual relationship between Plaintiff and Meritain, and because the only contract to which Meritain is a party expressly states that MLS retains full discretionary authority on claims and specifically disclaims Meritain’s authority to interpret the Plan or adjudicate claims, Plaintiff’s breach of contract cause of action against Meritain should be dismissed.

2. Plaintiff Fails To Seek Any Relief With Respect To A Lien.

Plaintiff’s Petition is styled as a motion seeking the adjudication of a health care lien, but does not seek any relief with respect to any lien. While the Petition mentions in passing at

² Plaintiff is not, and does not allege, that she is a party to the ASA. Even if she did, the ASA prohibits any claims by parties claiming to be third party beneficiaries. See id., § 7.10.

paragraph 10 that “Defendant Meritain made limited payment to Plaintiff’s medical providers and has asserted its statutory ERISA lien against Plaintiff’s settlement in the amount of \$13,405.18,” it makes *no* claim that the lien is improper or that it should be reduced.³ Thus, Plaintiff’s claim for adjudication of a health care lien should be dismissed as a matter of law.

II. CONCLUSION

For all of the foregoing reasons, Meritain respectfully submits that the Petition fails to state a claim upon which relief may be granted against Meritain and should be dismissed.

Respectfully submitted,

SAUTER SULLIVAN LLC

By: /s/ Kevin A. Sullivan
Kevin A. Sullivan, #40735
3415 Hampton Ave.,
St. Louis, Missouri 63139
Telephone: (314) 768-6802
Facsimile: (314) 781-2726
Email: Ksullivan@ss-law.net
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was sent via U.S. First Class Mail and electronic to counsel of record on this 13th day of December, 2017 to:

Andrea McNairy, #58558
Lara L. Gillham, #67320
Brown & Crouppen, P.C.
One Metropolitan Square
211 N. Broadway, Suite 1600
St. Louis, MO 63102
andream@getbc.com
pipleadings@getbc.com
Attorneys for Plaintiff

/s/ Kevin A. Sullivan

³ Even if the Petition made such a claim (it does not), it would have to be asserted against MLS and not Meritain, because as set forth in the ASA, payments on claims are solely made from the MLS’s accounts. *See id.*, § 6.4 (stating that Meritain’s disbursements in satisfactions of claims shall come only from the Claims Payment Account); *see also id.*, § 1.3 (defining “Claims Payment Account” as “established, owned and funded by the Client [*i.e.*, MLS].”) Any lien would thus be asserted on MLS’s behalf, for the benefit of MLS.

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

BONITA ABRAM,)	
)	
Plaintiff,)	
)	Case No.: 17JE-CC00684
v.)	
)	
MERITAIN HEALTH,)	
)	
Defendant.)	

ENTRY OF APPEARANCE

COMES NOW, Kevin A. Sullivan, and the law firm of Sauter Sullivan, LLC, and hereby enter their appearance on behalf of the Defendant, Meritain Health, in the above referenced matter.

Respectfully submitted,

SAUTER SULLIVAN, LLC

By: /s/ Kevin A. Sullivan
Kevin A. Sullivan, #40735
3415 Hampton Avenue
St. Louis, MO 63139
Telephone: (314) 768-6802
Facsimile: (314) 781-2726
E-mail: ksullivan@ss-law.net
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was sent via U.S. First Class Mail and electronic to counsel of record on this 13th day of

December, 2017 to:

Andrea McNairy, #58558
Lara L. Gillham, #67320
Brown & Crouppen, P.C.
One Metropolitan Square
211 N. Broadway, Suite 1600
St. Louis, MO 63102
andream@getbc.com
pipleadings@getbc.com
Attorneys for Plaintiff

/s/ Kevin A. Sullivan

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI**

BONITA ABRAM,)
)
)
 Plaintiff,)
)
)
 v.) Case No. 17JE-CC00684
)
)
 MIDWEST LIBRARY SERVICE, INC.) Div. 6
)
)
 SERVE: Howard Lessner)
 Registered Agent)
 11443 St. Charles Rock Road)
 Bridgeton, MO 63044)
)
)
 Defendant.)

PLAINTIFF'S MOTION FOR LEAVE BY CONSENT TO
FILE FIRST AMENDED MOTION TO ADJUDICATE HEALTH CARE LIEN

COMES NOW Plaintiff Bonita Abram, by and through counsel, and for her motion for leave of Court to file her First Amended Motion to Adjudicate Health Care Lien, states as follows:

1. On or about September 11, 2017, Plaintiff filed her Motion to Adjudicate Health Care Lien against Defendant Meritain Health Inc. in this case.

2. On or about December 13, 2017, Defendant Meritain Health filed its Motion to Dismiss Plaintiff's claims for breach of contract against it.

3. Counsel for Defendant Meritain Health, Inc. consents to Plaintiff's Motion for Leave to file her First Amended Motion to Adjudicate Health Care Lien, dismissing her claim against the incorrectly named defendant Meritain and instead pleading a cause of action against Defendant Midwest Library Service, Inc.

4. Plaintiff hereby requests that this Honorable Court grant Plaintiff leave to file her First Amended Motion to Adjudicate Health Care Lien to dismiss her claim against Defendant Meritain,

as the incorrectly named party, and to add Defendant Midwest Library Service, Inc. as the correct Defendant. *First Amended Motion to Adjudicate Health Care Lien, attached hereto as Exhibit 1.*

5. Plaintiff hereby requests that this Honorable Court issue a summons to Midwest Library Service, Inc. for Plaintiff's First Amended Motion to Adjudicate Health Care Lien.

6. Counsel for Plaintiff states that she has made a due and diligent effort to timely carry on with the proceedings of this case.

WHEREFORE, Plaintiff, Bonita Abram prays this Court enter an order for leave of Court to file her First Amended Motion to Adjudicate Health Care Lien, the Motion to Adjudicate Health Care Lien be deemed filed upon entry of this Order, to issue a summons for Midwest Library Service, Inc., and for such further relief as the Court deems just and necessary.

BROWN & CROUPPEN, P.C.

BY: /s/ Lara L. Gillham
Andrea McNairy, #58558
Lara L. Gillham, #67320
One Metropolitan Square
211 N. Broadway, Ste. 1600
St. Louis, MO 63102
(314) 261-7122
(314) 421-0359 (Fax)
Attorneys for Plaintiff
andream@getbc.com
Larag@getbc.com
pipleadings@getbc.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 21st day of December, 2017, a true and correct copy of the foregoing was served via the Court's electronic filing system, and via electronic mail to all counsel of record.

/s/ Lara L. Gillham

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI**

BONITA ABRAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17JE-CC00684
)	
MIDWEST LIBRARY SERVICE, INC.)	Div. 6
)	
SERVE: Howard Lessner)	
Registered Agent)	
11443 St. Charles Rock Road)	
Bridgeton, MO 63044)	
)	
Defendant.)	

**PLAINTIFF'S FIRST AMENDED
MOTION TO ADJUDICATE HEALTH CARE LIEN**

COMES NOW Plaintiff, by and through counsel, and for her First Amended Motion to Adjudicate Health Care Lien, states as follows:

1. Plaintiff Bonita Abram is a resident of Jefferson County, in the State of Missouri.
2. Defendant Midwest Library Service, Inc. (hereinafter "MLS") is Plaintiff's primary health insurance provider, and an ERISA lien holder.
3. Meritain Health, Inc. (hereinafter "Meritain") is the third party administrator of Plaintiff's employee benefit plan with Defendant MLS.
4. On or about April 6, 2013, Plaintiff Bonita Abram suffered serious injuries as a result of an automobile crash in Jefferson County, Missouri, and subsequently made claims for damages against the negligent driver, Loy Cooper and his insurance company, Shelter Mutual Insurance Company.
5. As a result of her injuries, Plaintiff underwent extensive medical treatment from numerous medical providers over the span of two years.

6. As a result of the above referenced incident, Plaintiff incurred debts in the form of significant medical expenses totaling over \$187,000.00, of which \$146,531.06 remain outstanding and unpaid.

7. Both Shelter Mutual Insurance Company and Plaintiff's auto insurance company, American Family Mutual Insurance Company, have offered to tender settlement for their respective policy limits, in the combined total amount of \$200,000.00. Plaintiff anticipates that this amount represents the total amount of compensation she will receive from the injuries she suffered in the automobile crash on April 6, 2013.

8. Plaintiff made claims for her above-referenced medical treatment with her primary health insurance provider, MLS, through its third-party administrator Meritain, and District No. 9, I.A. of M. & A.W., her secondary health insurance provider.

9. District No. 9, I.A. of M. & A.W. made limited payment to Plaintiff's medical providers and has asserted its statutory ERISA lien against Plaintiff's settlement in the amount of \$3,797.23.

10. Meritain, on behalf of Defendant MLS, made limited payment to Plaintiff's medical providers and has asserted its statutory ERISA lien against Plaintiff's settlement in the amount of \$13,405.18.

11. Defendant MLS, through Meritain, refuses to pay for the remainder of Plaintiff's claims, asserting that its policy is only applicable for excess insurance coverage after any vehicle insurance policy that pays medical payments is exhausted.

12. Plaintiff's policy with MLS is only considered "excess" if the vehicle insurance has medical payments available to Plaintiff. Specifically, the Coordination of Benefits states, in relevant part:

Vehicle Limitation

When medical payments are available under any vehicle insurance, the Plan shall pay excess benefits only, without reimbursement for vehicle plan and/or policy deductibles. This Plan shall always be considered secondary to such plans and/or policies. This applies to all forms of medical payments under any vehicle plans and/or policies regardless of its name, title or classification.

13. Medical payments were not available to Plaintiff under her insurance policy with American Family.

14. Further, there is insufficient auto insurance to cover Plaintiff's claims from her motor vehicle accident, and Plaintiff does not have any other liability or medical payments insurance policies from which she can recover for her injuries.

15. Plaintiff's secondary health insurance, District No. 9, is also available to pay toward her claims, but is unable to do so until MLS pays its portion.

16. Settlement for Plaintiff's auto insurance claims cannot proceed until her health insurance pays her outstanding bills.

17. Plaintiff's undersigned counsel has incurred attorney's fees and costs in the total amount of \$39,949.75, plus the costs to file this action.

18. If MLS, through its administrator Meritain, continues to refuse payment on Plaintiff's claims, then after deductions are made from plaintiff's settlement for attorney's fees and costs (\$39,949.75) and her outstanding medical bills (\$146,531.06), there will not be sufficient funds remaining to pay any subrogation interest by ERISA providers or other lien holders.

19. However, if MLS were to pay on the claims for Plaintiff's medical treatment, there would be sufficient funds to pay the subrogation interests of both MLS and District No. 9, as well as the other lien holders.

20. Good cause exists for this Court to enter an Order requiring Defendant MLS to make its contractual payment on Plaintiff's medical bills before the settlement proceeds are distributed.

WHEREFORE, Plaintiff prays this Court enter an Order requiring Defendant MLS to make payment on Plaintiff's medical bills in the fashion set forth herein, for expenses, fees, and court costs incurred in filing this action, and for such other and further relief as this Court deems just and proper under the circumstances.

BROWN & CROUPPEN, P.C.

BY: /s/ Lara L. Gillham
Andrea McNairy, #58558
Lara L. Gillham, #67320
One Metropolitan Square
211 N. Broadway, Ste. 1600
St. Louis, MO 63102
(314) 261-7122
(314) 421-0359 (Fax)
Attorneys for Plaintiff
andream@getbc.com
Larag@getbc.com
pipleadings@getbc.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 21st day of December, 2017, a true and correct copy of the foregoing was served via the Court's electronic filing system, and via electronic mail to all counsel of record.

/s/ Lara L. Gillham

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI**

BONITA ABRAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17JE-CC00684
)	
MIDWEST LIBRARY SERVICE, INC.)	Div. 6
)	
SERVE: Howard Lessner)	
Registered Agent)	
11443 St. Charles Rock Road)	
Bridgeton, MO 63044)	
)	
Defendant.)	

MOTION FOR APPOINTMENT OF SPECIAL PROCESS SERVER

COMES NOW Plaintiff and hereby requests that this Honorable Court issue a Summons for service upon Defendant Midwest Library Service, Inc. through its Registered Agent, Howard Lessner, by special process server, Jose Pineiro, Shane Bauer and/or Pam King-Wheatley. The individuals are not parties to this suit and such process server is over the age of 18.

BROWN & CROUPPEN, P.C.

BY: /s/ Lara L. Gillham
Andrea McNairy, #58558
Lara L. Gillham, #67320
One Metropolitan Square
211 N. Broadway, Ste. 1600
St. Louis, MO 63102
(314) 261-7122
(314) 421-0359 (Fax)
Attorneys for Plaintiff
andream@getbc.com
Larag@getbc.com
pipleadings@getbc.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 5th day of January, 2018, a true and correct copy of the foregoing was served via the Court's electronic filing system, and via electronic mail to all counsel of record.

/s/ Lara L. Gillham



IN THE 23RD JUDICIAL CIRCUIT COURT, JEFFERSON COUNTY, MISSOURI

Judge or Division: TROY CARDONA	Case Number: 17JE-CC00684	
Plaintiff/Petitioner: BONITA ABRAM	Plaintiff's/Petitioner's Attorney/Address LARA L GILLHAM 211 NORTH BROADWAY SUITE 1600 ST LOUIS, MO 63102	
Defendant/Respondent: MERITAIN HEALTH INC--120 SOUTH CENTRAL	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050	
Nature of Suit: CC Other Miscellaneous Actions		(Date File Stamp)

Summons in Civil Case

The State of Missouri to: HOWARD LESSNER

Alias:

REGISTERED AGENT
11443 ST. CHARLES ROCK ROAD
BRIDGETON, MO 63044

COURT SEAL OF



JEFFERSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

MICHAEL E. REUTER, CIRCUIT CLERK
BY: /s/ASHLEY SCRIVNER, DEPUTY CLERK
DATE: 01/09/18

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.
☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____

_____ (name) _____ (title).

☐ other _____.

Served at _____ (address)

in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees

Summons \$ _____
 Non Est \$ _____
 Sheriff's Deputy Salary
 Supplemental Surcharge \$ 10.00
 Mileage \$ _____ (_____ miles @ \$._____ per mile)
Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

AFFIDAVIT OF SERVICE

Case: 17JE-CC00684	Court: 23RD JUDICIAL CIRCUIT COURT	County: JEFFERSON, MO	Job: 1928162
Plaintiff / Petitioner: BONITA ABRAM		Defendant / Respondent: MERITAIN HEALTH INC - 120 SOUTH CENTRAL	
Received by: MISSOURI PROCESS SERVING, LLC		For: BROWN AND CROUPPEN - MISSOURI	
To be served upon: MIDWEST LIBRARY SERVICE - HOWARD LESSNER REGISTERED AGENT			

I, Sherri Wood, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the State where service was effected, I was authorized by law to make service of the documents and informed the said person of the contents herein.

I have served the attached documents by:

- ☒ delivering a copy of the service documents to the Defendant.
☐ leaving a copy of the service documents at the dwelling place or usual abode of the Defendant with the person identified below, who is a person over the age of 15 years.
☐ (for service on a corporation) delivering a copy of the service documents to the person identified below.
☐ Documents could not be served due to lack of contact with the subject.

SERVED IN _____ COUNTY AND IN THE STATE OF _____

Recipient Name / Address: MIDWEST LIBRARY SERVICE - HOWARD LESSNER REGISTERED AGENT , COMPANY: 11443 ST CHARLES ROCK ROAD, BRIDGETON , MO 63044

Manner of Service: Registered Agent, Jan 10, 2018, 11:17 am CST

Documents: SUMMONS, PLAINTIFF'S FIRST AMENDED MOTION TO ADJUDICATE HEALTH CARE LIEN (Received Jan 9, 2018 at 1:00pm CST)

Additional Comments:

1) Successful Attempt: Jan 10, 2018, 11:17 am CST at COMPANY: 11443 ST CHARLES ROCK ROAD, BRIDGETON , MO 63044 received by MIDWEST LIBRARY-SERVICE - HOWARD LESSNER REGISTERED AGENT . Age: 80; Ethnicity: Caucasian; Gender: Male; Weight: 175; Height: 5'9"; Hair: Gray; Eyes: Blue;

Sherri Wood 1/10/18

 SHERRI WOOD Date
 PROCESS SERVER

MISSOURI PROCESS SERVING, LLC
 1430 Washington Ave Suite 220
 St Louis, MO 63103
 314-600-2791

Subscribed and sworn to before me by the affiant who is personally known to me.

Toni Mothershed

 Notary Public
 1-10-18 9-8-21

 Date Commission Expires



AFFIDAVIT OF SERVICE

Case: 17JE-CC00684	Court: 23RD JUDICIAL CIRCUIT COURT	County: JEFFERSON, MO	Job: 1928162
Plaintiff / Petitioner: BONTA ABRAM		Defendant / Respondent: MERITAIN HEALTH INC - 120 SOUTH CENTRAL	
Received by: MISSOURI PROCESS SERVING, LLC		For: BROWN AND CROUPPEN - MISSOURI	
To be served upon: MIDWEST LIBRARY SERVICE - HOWARD LESSNER REGISTERED AGENT			

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SERVED IN _____ COUNTY AND IN THE STATE OF _____

Recipient Name / Address: MIDWEST LIBRARY SERVICE - HOWARD LESSNER REGISTERED AGENT , COMPANY: 11443 ST CHARLES ROCK ROAD, BRIDGETON , MO 63044

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Sherri Wood 1/10/18
 SHERRI WOOD
 PROCESS SERVER

MISSOURI PROCESS SERVING, LLC
 1430 Washington Ave Suite 220
 St Louis, MO 63103
 314-600-2791

Subscribed and sworn to before me by the affiant who is personally known to me.

Toni Mothershed
 Notary Public
 F1018 9-8-21
 Date Commission Expires






IN THE 23RD JUDICIAL CIRCUIT COURT, JEFFERSON COUNTY, MISSOURI

Judge or Division: TROY CARDONA	Case Number: 17JE-CC00684
Plaintiff/Petitioner: BONITA ABRAM	Plaintiff's/Petitioner's Attorney/Address LARA L GILLHAM 211 NORTH BROADWAY SUITE 1600 ST LOUIS, MO 63102
Defendant/Respondent: MERITAIN HEALTH INC--120 SOUTH CENTRAL	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050
Nature of Suit: CC Other Miscellaneous Actions	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: HOWARD LESSNER
Alias:

REGISTERED AGENT
11443 ST. CHARLES ROCK ROAD
BRIDGETON, MO 63044

COURT SEAL OF

JEFFERSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

MICHAEL E. REUTER, CIRCUIT CLERK
BY: /s/ASHLEY SCRIVNER, DEPUTY CLERK
DATE: 01/09/18

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

☐ other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$ _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI**

BONITA ABRAM,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17JE-CC00684
)	
MERITAIN HEALTH)	Div. 6
)	
Defendant.)	

AMENDED NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff Bonita Abram will call up for hearing Plaintiff's Motion to Adjudicate Health Care Lien on **Tuesday, March 6, 2018 at 9:00 a.m.** before the Honorable Judge Cardona in Division 6 of the Circuit Court of Jefferson County, Missouri.

BROWN & CROUPPEN, P.C.

BY: /s/ Lara L. Gillham
Lara L. Gillham, #67320
Andrea McNairy, #58558
One Metropolitan Square
211 N. Broadway, Ste. 1600
St. Louis, MO 63102
(314) 261-7122
(314) 754-9886 (Fax)
Attorney for Plaintiff
Larag@getbc.com
andream@getbc.com
pipleadings@getbc.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 18th day of January, 2018, a true and correct copy of the foregoing was served via the Court's electronic filing system, and via electronic mail to all counsel of record.

/s/ Lara L. Gillham